

THE THIRD BRANCH

Newsletter
of the
Federal
Courts



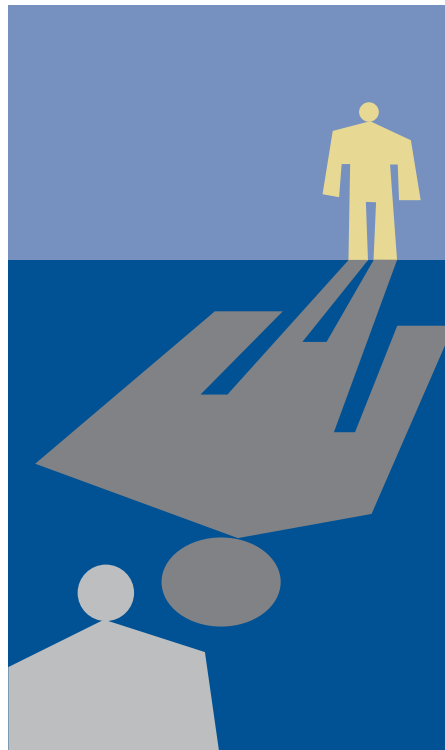
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DOJ IG Review Faults Security, Recommends Improvements

A Department of Justice Inspector General (IG) review released in January 2010 notes that threats and inappropriate communications to federal judges, U.S. attorneys and assistant U.S. attorneys (AUSAs) have increased dramatically, growing from 592 in fiscal year 2003 to 1,278 in FY 2008.

The U.S. Marshals Service (USMS) is responsible for ensuring the safety and security of federal judicial proceedings and protecting more than 2,000 federal judges and approximately 5,250 other federal court officials. In a review of 1,587 threats reported to the USMS during fiscal years 2007 and 2008, the IG found deficiencies in the USMS response to some of those threats, and also learned from interviews that some threats were not reported. The IG review also found that the USMS does not consistently provide a risk assessment of each

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Judiciary Receives 2010 Funding

Public Law No. 111-117 gives the Judiciary nearly \$6.9 billion in funding for fiscal year 2010. For more on this year's appropriations, see page 2.

INTERVIEW

Panel Promotes Just and Efficient Conduct of Litigation

Judge John G. Heyburn (W.D. Ky.) was named chair of the Judicial Panel on Multidistrict Litigation in 2007. He was appointed to the U.S. District Court for the Western District of Kentucky in 1992. Prior to chairing the Panel, he served as chair of the Judicial Conference Committee on the Budget for seven years.

Q: Please describe the Panel's composition and purpose.

A: The Panel consists of seven Article III judges. The Chief Justice appoints each member to a seven-year term, and no two Panel members can be from the same circuit. In addition to myself, the other current Panel members are, in order of Panel seniority: Judges Robert L. Miller Jr. (N.D. Indiana), Kathryn H. Vratil (D. Kansas), David R. Hansen (8th Cir.), W. Royal Furgeson Jr. (N.D. Texas), Frank C. Damrell Jr. (E.D. California), and David G. Trager (E.D. New York). Past chairmen have

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Judiciary Receives 5.7 Percent Increase in Appropriations for FY 2010

The Judiciary received nearly \$6.9 billion in funding for fiscal year 2010 in Pub. L. No. 111-117, the Consolidated Appropriations Act of 2010, signed by the President on December 16, 2009.

"Congress continued to support the funding necessary to ensure the optimal operation of the federal Judiciary," said Administrative Office Director Jim Duff. "We are grateful for the efforts of Judge Julia S. Gibbons and the Budget Committee, as well as those of all judges who engage their local delegations."

The Judiciary had requested \$6.9 billion in a September re-estimate. Initial appropriations requests are prepared nearly 18 months ahead of

a fiscal year, and subsequent revised estimates are made based on updated statistics on workload, judicial confirmations, rent costs, and other projected spending. The FY 2010 funding level provides the Judiciary a 5.7 percent increase over the FY 2009 appropriations, which fully funds those revised estimates.

Court Funding

Court operations, which are funded by the Salaries and Expenses account, received slightly more than \$5.0 billion in appropriations. These funds allow for a FY 2010 Financial Plan in which court allotments grow by 6 percent over FY 2009. These allot-

ments will allow courts to hire staff needed to address pressing workload needs. The Defender Services account received \$977.7 million for FY 2010, which included an increase in the non-capital panel attorney rate from \$110 to \$125 per hour. The Court Security Account received \$452.6 million, which fully meets our revised estimated security requirements.

Courthouse Construction

For FY 2010, Pub. L. No. 111-117 provides \$289 million to the General Services Administration for courthouse construction. All four projects on the Judiciary's Five-Year Courthouse Plan for 2010 were funded: Salt Lake City, Utah; Savannah, Georgia; San Antonio, Texas; and Mobile, Alabama, which received partial funding. Greenbelt, Maryland, which was on the Plan for 2011, received site

FY 2010 Judiciary Appropriations (\$000)


Appropriation Account	FY 2009 Enacted Approp.	FY 2010 Re-Estimated Request	FY 2010 Final Approp.	2010 Enacted vs. 2009 Enacted
U.S. Supreme Court				
Salaries & Expenses	69,777	74,081	74,034	6.1%
Care of Buildings and Grounds	18,447	14,525	14,525	-21.3%
U.S. Courts of Appeals for the				
Federal Circuit	30,384	34,702	32,560	7.2%
U.S. Court of International Trade	19,605	21,381	21,350	8.9%
Courts of Appeals, District Courts & Other Judicial Services				
Salaries & Expenses*	4,815,622	5,049,402	5,016,446	4.2%
Defender Services	849,400	981,945	977,748	15.1%
Fees of Jurors	62,206	62,111	61,861	-0.6%
Court Security	428,858	452,607	452,607	5.5%
Subtotal:	6,156,086	6,546,065	6,508,662	5.7%
Administrative Office	79,049	83,095	83,075	5.1%
Federal Judicial Center	25,725	27,328	27,328	6.2%
Judicial Retirement Funds	76,140	82,374	82,374	8.2%
U.S. Sentencing Commission	16,255	16,837	16,837	3.8%
TOTAL, The Judiciary	\$6,491,438	\$6,900,388	\$6,860,745	5.7%

*FY 2009 enacted appropriations include \$10.0 million in emergency appropriations enacted under Pub. L. No. 111-32.

and design funding. In addition, the project in Lancaster, Pennsylvania, which was originally proposed as a lease-construct project, received site and design funding to proceed as a federal construction project. The project in Yuma, Arizona, which also originated as a lease-construct project, will now be a federal construction project utilizing American Recovery and Reinvestment Act monies.


The Act continues the Judiciary's tenant alterations authority to contract directly for projects costing under \$100,000 in lieu of contracting through the General Services Administration.

Judgeships

A provision of the Consolidated Appropriations Act extends for one year temporary judgeships in the District of Hawaii, the District of Kansas, and the Northern District of Ohio. 

Outside Earned Income Ceiling for 2010

With the 2010 increase in the basic pay for Executive Schedule employees, the ceiling on outside earned income for federal judges also increased, from \$26,550 in 2009 to \$26,955 in 2010. The ceiling applies only to outside earnings and not to investment income, royalties, pensions, and similar income sources that are specifically excluded by regulation.

The Ethics in Government Act of 1978, as amended in 1989 by the Ethics Reform Act, prohibits high-ranking government officials from having outside earned income exceeding "15 percent of the annual rate of basic pay for Level II of the Executive Schedule." Effective January 1, 2010, the basic pay for Executive Level II increased to \$179,700. 

All Regional Appeals Courts Use Same Case Management System

When the U.S. Courts of Appeals for the 2nd and 11th Circuits went live with the Case Management/Electronic Case Files (CM/ECF) system on January 4, 2010, they completed the transition of all of the federal Judiciary's 12 regional appeals courts to the system. The courts of appeals join all of the district and bankruptcy courts on CM/ECF, concluding a nearly decade-long rollout of the system for the federal Judiciary. The bankruptcy courts began implementation in early 2001, and the district courts began their implementation in 2002. The first of the appeals courts followed in late 2004.


When asked about what is next on the horizon for CM/ECF, Judge Julie Robinson (D. Kan.), chair of the Judicial Conference Committee on Court Administration and Case Management, said that the development of the next generation of CM/ECF is well underway.

"We're at the stage where our bankruptcy and district court

communities are working to develop the functional requirements for the clerks' offices and for chambers," Robinson said. "The functional requirements of our external stakeholders will come shortly."


But Robinson says it's too early to say what the next generation of CM/ECF will look like.

"A decision was made at the outset," she said, "not to define what we would get until we could map out our business processes and our functional requirements. We're going to let that determine the scope of the project."

The CM/ECF system provides courts with enhanced and updated docket management. It allows courts to maintain case documents in electronic form and gives each court the option of having case documents—pleadings, motions, and petitions—filed with the court over the Internet. 

CJA Hourly Rates Increase

In Pub. L. No. 111-117, Congress authorized and provided funds to increase the non-capital hourly rate for Criminal Justice Act (CJA) private "panel" attorneys from \$110 to \$125, and the maximum hourly capital rate from \$175 to \$178 (for federal capital prosecutions and capital post-conviction proceedings). These rates apply to attorneys appointed to represent eligible persons under the CJA, 18 U.S.C. § 3006A, and the Antiterrorism and Effective Death

Penalty Act of 1996, codified in part at 18 U.S.C. § 3599. The new hourly compensation rates apply to work performed on or after January 1, 2010. Where the appointment of counsel occurred before this effective date, the new compensation rates apply to that portion of services provided on or after January 1, 2010. As a result of the change in the non-capital hourly rate, case compensation maximums for non-capital representations have also increased. 

Feedback on Technical Matters Aids Legislation

Since July 2007, federal courts of appeals have sent to Congress 18 opinions that flag technical problems in statutory language. The opinions are transmitted through a Judicial Conference-endorsed project that encourages communication between courts and Congress. Through the project, courts of appeals can send to Congress opinions that comment on possible technical problems in statutes. Opinions go to the leadership, with copies to both houses' Office of Legislative Counsel, which analyze the opinions and forward them to the relevant committees. The Administrative Office and the Governance Institute also are copied.

This "statutory housekeeping" project has the support of the bipartisan leadership of the House and Senate Judiciary Committees and the Senate and House Offices of Legislative Counsel. It provides a neutral means for interbranch communications and helps drafters make legislative intent as clear as possible.

Douglas Bellis of the House of Representatives Legislative Counsel Office said the feedback is invaluable: "It calls our attention to drafting situations that are capable of repetition," Bellis said, speculating that the referrals may "have a greater ultimate influence on the language of statutes than when (and to the extent) it leads to an amendment of the particular law."

The project was conceptualized in the mid-1990s by the late Judge Frank

M. Coffin, chair of the Judicial Conference Judicial Branch Committee, and by Judge Robert A. Katzmann, now a 2nd Circuit judge and vice-chair of the Judicial Branch Committee, when Katzmann was president of the Governance Institute, a nonprofit organization concerned with the nexus between law, institutions, and policy, and a Brookings Institution scholar. Judicial participation declined early in the decade, and in 2006 the Legislative Counsel in both houses asked the Governance Institute to revitalize it. In July 2007, judges in the U.S. courts of appeals were reminded of the project in a memo, <http://jnet.ao.dcn/img/assets/5710/dir7-078.pdf>.

Katzmann said that the submitted opinions "represent a way that courts can respond to a request from Congress for help on how it might refine its statutory drafting. Although Congress is aware of highly publicized litigation over problematic statutory language, it lacks the time and resources to monitor the vast majority of judicial decisions."


Some of the technical problems that submitted opinions have flagged include:

- Ambiguous language that courts must resolve; for example, whether "not less than" in the Class Action Fairness Act should be read as "not more than," or whether the Immigration and Nationality Act's "lawfully resided continuously"

for seven years requirement, necessary for a waiver of inadmissibility, begins when an alien applies for adjustment of status or when that status is actually granted;

- Grammatical problems that affect meaning; for example, whether the Child Pornography Prevention Act's reference to materials "transported in interstate . . . commerce by any means including computer" creates an "Internet exception" or requires pornography transmitted by computer to have crossed state lines; and
- Gaps in time; for example, how do the courts deal with a gap created by a Federal Rule-created deadline for objecting to a debtor's discharge and a statutory provision regarding the discharge?

Governance Institute president Russell Wheeler has reported to the Judicial Branch Committee, chaired by Judge D. Brock Hornby (D. Me), that the 18 opinions have come from five courts of appeals and identify 16 problematic provisions. The submitted opinions cited 44 other court of appeals cases that discussed one of the 16 provisions. Of the 18 opinions, 12 came from the Court of Appeals for the Seventh Circuit (authored by eight of the court's judges), three from the Second Circuit, and one each from the Third, Ninth, and Tenth Circuits.


For information on how to submit an opinion to Congress for the project, contact the Judicial Branch Committee. 

FJC Report Focuses on Sealed Cases in Federal Courts

Of the more than 311,814 civil and criminal cases filed in all federal district courts in 2006, only 1,653 of them—0.5 percent—were completely

sealed, a recent study by the Federal Judicial Center (FJC) found.

A study of what kinds of cases are sealed and how whole cases come

to be sealed was requested by the Judicial Conference's Committee on Rules of Practice and Procedure. The committee will review the report 

and decide whether to make recommendations to the Conference.

"The overwhelming majority of the sealed cases appear to have been sealed for valid reasons," said Judge Harris Hartz (10th Cir.), chair of the committee's sealing subcommittee.

Of the 245,326 civil cases filed, 576 of them (0.2 percent) were sealed. The largest category (182) were "qui tam" actions, in which a private-party whistleblower may bring an action under the False Claims Act to recover money paid by the government as a result of fraud. The action is filed under seal without notifying the defendant, and the government is given 60 days to decide whether to take the lead in the case.

The study found 1,077 sealed criminal cases among 66,458 cases handled by district judges (1.6 percent). Three principal reasons played a part in 65 percent of the sealed cases:

- Sealing the indictment so as not to tip off the defendant until the defendant's apprehension;
- Protecting the identity of a juvenile defendant; and

- Keeping secret the details of a cooperating defendant's prosecution.

The vast majority of sealed records are warrant-related applications.

In matters handled by magistrate judges, 15,177 of 97,155 were sealed. The vast majority of sealed records are warrant-related applications. Of the 24,099 matters docketed on the miscellaneous or ancillary dockets of the district courts, 8,121 (34 percent) were sealed, with most falling into four categories—warrant-type applications, grand jury and Criminal Justice Act matters, requests from foreign governments for assistance with cases in their courts, and forfeitures and seizures.

The FJC study also included all appeals filed in the 13 circuit

courts and all bankruptcy cases filed in 2006.

There were 64,475 appeals filed in the courts of appeals for the 13 circuits in 2006, and 82 of them were sealed (0.13 percent). Two-thirds of the sealed appeals involved grand jury matters, juvenile defendants, or cooperating defendants.

The study found that bankruptcy courts essentially do not have completely sealed cases.

A record of judicial approval for the sealing of a whole case usually exists for civil and criminal cases most likely to require judicial discretion for sealing, the study found. These include civil cases other than those filed under the False Claims Act and criminal cases sealed to protect cooperators. Cases are often unsealed when the reason for their sealing expires, but many cases were unsealed as a result of the researchers' drawing the courts' attention to them.

The 32-page report can be found online, at [www.fjc.gov/public/pdf.nsf/lookup/sealcafc.pdf/\\$file/sealcafc.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sealcafc.pdf/$file/sealcafc.pdf). 



Judge William J. Nealon (M.D. Pa.)


Pennsylvania Judge Celebrates 50 Years on Bench

Judge William J. Nealon in the Middle District of Pennsylvania recently celebrated 50 years as a judge. A Scranton native, father of 10, (and grandfather to 27, great-grandfather to 3), and a U.S. Marine Corps First Lieutenant in World War II, Nealon began his judicial career in 1960, as a Lackawanna County judge. He was appointed to the federal bench in 1962 by President John F. Kennedy and served as chief

judge of the Middle District of Pennsylvania from 1976-1989.

From the perspective of a half-century, what would he say to a judge just starting out on the bench?

"I would give a new judge the same advice that I received over 50 years ago," Nealon said. "Be fair, impartial, patient, and treat litigants and lawyers with respect and courtesy. Additionally, attempt to give timely and appropriate attention and consideration to every issue you decide. Finally, do your best and don't expect perfection."

Nealon took senior status in 1989 and, well into his 80s, continues to carry a substantial caseload. 

Threats Up continued from page 1

threat, nor does it consistently track threat referrals to the FBI. It should be noted, however, in many cases, that both the USMS and the judge concluded that a threat was not worthy of further investigation by the FBI.

More fundamentally, the review suggests, threats against judges are not consistently reported by the judges who receive them. And when judges reported threats, they often failed to do so promptly. For the USMS to most effectively protect federal judges and their families from harm, protectees must promptly notify the USMS when they receive threats or inappropriate communications.

"I think judges—and I include myself—make an initial evaluation of what they consider to be the seriousness of a threat. If they don't think it's serious, they don't report it," said Judge Michael Kanne (N.D. Ind.), chair of the Judicial Conference Committee on Judicial Security. "But that's not the way we should be operating. Don't make the first cut. Anytime you get what looks like an inappropriate communication, give it to the U.S. Marshals Service. It's their job to make those evaluations. They have district inspectors and a threat assessment center to do that."

The USMS defines a threat as "any action or communication, explicit or implied, of intent to assault, resist, oppose, impede, intimidate, or interfere with any member of the federal Judiciary, or other USMS protectee, including members of their staffs or family." An inappropriate communication is "any communication directed to a USMS protectee or employee that warrants further investigation."

According to the DOJ review, USMS judicial security staff are specifically trained in threat response

procedures and USMS district managers are required to ensure that protectees are aware of the importance of reporting threats. The review notes that federal judges receive the USMS security handbook containing guidance on reporting threats—but only after they receive a threat.

The Judiciary ensures that a federal judge receives the first of many security briefings beginning before confirmation, and followed by security briefings as a new judge. New chief judges also receive security briefings. Due to the dangers inherent in their positions, all federal judges are eligible to have a USMS-administered home intrusion detection (alarm) system installed and monitored at government expense.

To further foster security awareness among federal judges, the Committee on Judicial Security—in collaboration with the U.S. Marshals Service, with the direction of Committee member

Judge Henry E. Hudson (E.D. Va.)—produced the DVD, "Project 365 – Security Starts With You." Actual incidents are used to make judges, their families, and staff more aware of the types of threats that can occur. Every federal judge has received a copy of the DVD.

The Committee also is looking at another security concern—electronic media.

"I've asked Magistrate Judge Arthur Boylan (D. Minn), a member of our committee, to chair a working group on electronic media threats," said Kanne. "The group will look at how misuse of the Internet impacts judicial security and will alert judges to security concerns."

Kanne noted that it takes little effort to pull very detailed personal information on judges and their families from various sources on the Internet. As a cautionary tale, the London tabloids recently ran photos

Review of Courthouse Security to Follow Las Vegas Attack

The IG review was released the same day as a tragic incident at the Lloyd D. George U.S. Courthouse in Las Vegas, Nevada. Court Security Officer Stanley Cooper, a 15-year courthouse veteran, was killed and a Deputy U.S. Marshal was wounded. At great personal sacrifice, they saved numerous lives and effectively safeguarded the facility.

In a Judiciary-wide memo on the day of the shooting, Administrative Office Director Jim Duff said, "Such tragedies give us pause to express our gratitude for the dedicated service provided by law enforcement and security personnel who protect the nation's court system every day. Today we know that their sacrifice and service saved the lives of others who work in and use our courts. We express our condolences and gratitude to the family of Stanley Cooper, who died in the line of duty, and wish the Deputy U.S. Marshal a speedy and full recovery."

The Judicial Conference Committee on Judicial Security was briefed on the shooting by USMS Director John Clark. Preliminary findings show that the security equipment and procedures stopped the gunman from penetrating the security check-point in the courthouse. However, the USMS is reviewing federal courthouse security in light of the incident to determine what, if any, enhancements might be required.


AKAL Security, the employer of Court Security Officer Stanley Cooper, has set up a memorial fund to honor his sacrifice and to assist his family. Contributions may be made by check to: The Stanley Cooper Memorial Fund, AKAL Security, Inc., 7 Infinity Loop, Espanol, NM 87532. All donations and the names of contributors will be forwarded to the family.

of a senior intelligence officer, along with photos of his wife and children, their addresses, and their summer place—all taken from his wife's Facebook page.

Kanne recommends that each chief judge or local court security committee request a briefing from the district U.S. Marshal on how they, their judicial assistants, law clerks, and other court personnel can identify inappropriate communications and threats, how to communicate that information to the district U.S. Marshals office—and most importantly—what a judge should expect from the USMS after advising it of a threat. Judges should also complete the Judicial Security Profile for the USMS when appointed to the bench and update it annually. “This information is invaluable to the district Marshals in the event of an imminent threat,” Kanne said.

To correct any deficiencies in the USMS's ability to protect federal judges, the DOJ review has recommended that, among other actions, the USMS should:

- Improve the understanding by federal judges, U.S. attorneys and AUSAs of the need for prompt reporting of threats and the consequences of delays or failure to report;
- Provide protectees with protective measures that are commensurate with the risk level of the threat;
- Collect information that will enable the USMS to monitor the performance of its response to threats against protectees; and
- Coordinate effectively with the FBI and local law enforcement agencies to keep protectees safe.

The DOJ report, *Review of the Protection of the Judiciary and the United States Attorneys* is available on-line at www.justice.gov/oig/reports/plus/e1002r.pdf. 

Electronic Filing by Probation and Pretrial Services Speeds Up Court Process, Reduces Paper

Probation and pretrial services offices looking for a way to save time and money, move cases faster, and eliminate paper should take a new look at a familiar system that's tested, ready, and available right now in the federal courts.

It's the Case Management/Electronic Case Files (CM/ECF) System, live in all district and appellate courts. Since November of last year, a pilot group of seven probation and pretrial services offices has been working on ways to integrate existing probation and pretrial services processes with the CM/ECF system as a way to make effective use of available technology and information. Now they've produced templates and a model based on their experiences for courts to use as they begin working in CM/ECF.

“Our officers in field offices have found e-filing especially beneficial.”

“Probation offices are paper-intensive,” said Rick Houck, a former chief probation officer in the District of Columbia who is now leading an Information Technology Assist program at the Administrative Office. “We spend a lot of time moving paper between judges, parties, attorneys, and the clerk's office—all of which is costly. The solution to reducing all that paper could be CM/ECF.”

The electronic case files and case management components of the system can accommodate such commonly used documents as presentence reports and petitions for warrants or summonses, and also electronically move case documents or notification of filings or violations to judges and parties in the case. While most probation and pretrial services documents are not public documents, making them easily and immediately accessible to judges and officers is a significant efficiency.

“Our officers in field offices have found e-filing especially beneficial,” said Robert Rosenbloom, a U.S. Probation Officer in the District of New Mexico. “Previously, once a violation was written, a duty officer in the main office would retrieve the paperwork and hand-deliver it to the assigned judge. E-filing allows the field offices to file and track violations themselves. The Notice of Electronic filing lets the officer know immediately after the judge rules on a petition, which allows them to proceed without delay.”

Chief U.S. Probation Officer Gregory A. Forest in the Western District of North Carolina has found filing documents in CM/ECF to be a time- and money-saver. “We make fewer copies and spend less in postage,” said Forest. But it was when the probation office began filing Presentence Reports and Objections to Presentence Reports in CM/ECF, that it realized one of the system's greatest advantages: a clearly time-stamped record for all parties. “That has eliminated many problems and

See E-filing on page 9

JUDICIAL MILESTONES

Appointed: Dolly M. Gee, as U.S. District Judge, U.S. District Court for the Central District of California, January 15.

Appointed: Charlene Edwards Honeywell, as U.S. District Judge, U.S. District Court for the Middle District of Florida, December 2.

Appointed: Abdul K. Kallon, as U.S. District Judge, U.S. District Court for the Northern District of Alabama, January 7.

Appointed: Jacqueline H. Nguyen, as U.S. District Judge, U.S. District Court for the Central District of California, December 9.

Appointed: Rosanna Malouf Peterson, as U.S. District Judge, U.S. District Court for the Eastern District of Washington, January 27.

Appointed: Christina Clair Reiss, as U.S. District Judge, U.S. District Court for the District of Vermont, December 21.

Appointed: Stephani W. Humrickhouse, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of North Carolina, January 6.

Appointed: Ronald H. Sargis, as U.S. Bankruptcy Judge, U.S. District Court for the Eastern District of California, January 14.

Appointed: Andrew T. Baxter, as U.S. Magistrate Judge, U.S. District Court for the Northern District of New York, January 3.

Appointed: Laurel D. Beeler, as U.S. Magistrate Judge, U.S. District Court for the Northern District of California, January 4.

Appointed: Patrick J. Hanna, as U.S. Magistrate Judge, U.S. District Court for the Western District of Louisiana, December 1.

Appointed: Margeret F. Leachman, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, January 4.

Appointed: Jennifer L. Thurston, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of California, December 31.

Appointed: Matt Jeffrey Whitworth, as U.S. Magistrate Judge, U.S. District Court for the Western District of Missouri, January 15.

Appointed: Cheryl R. Zwart, as U.S. Magistrate Judge, U.S. District Court for the District of Nebraska, January 15.

Elevated: U.S. District Judge Deborah K. Chasanow, to Chief Judge, U.S. District Court for the District of Maryland, succeeding U.S. District Judge Benson Everett Legg, January 4.

Elevated: U.S. District Judge Ricardo H. Hinojosa, to Chief Judge, U.S. District Court for the Southern District of Texas, November 13.

Elevated: U.S. District Judge William M. Skretny, to Chief Judge, U.S. District Court for the Western District of New York, succeeding U.S. District Judge Richard J. Arcara, January 1.

Elevated: U.S. Bankruptcy Judge Richard D. Taylor, to Chief Judge, U.S. Bankruptcy Court for the Eastern District of Arkansas, succeeding U.S. Bankruptcy Judge Audrey R. Evans, January 1.

Senior Status: U.S. Court of Appeals Judge Terence T. Evans, U.S. Court of Appeals for the Seventh Circuit, January 7.

This month, *Milestones* exceeded the available space. Please visit Third Branch online at www.uscourts.gov/ttb/2010-02/index.cfm to read the complete *Milestones* for February.

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JUDICIAL BOXSCORE

As of February 1, 2010

Courts of Appeals

Vacancies	20
Nominees	8

District Courts

Vacancies	82
Nominees	15

Courts with "Judicial Emergencies"	31
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Up-to-date information on judicial
vacancies is available at <http://www.uscourts.gov/judicialvac.html>

saved us a great deal of follow-up time with attorneys,” said Forest.

CM/ECF allows courts to determine who views documents and who has full access, important for many of the sensitive documents in a probation or pretrial services case file. Using the “non-public” option rather than as sealed or public documents, will ensure that only the chamber and parties of record will have access to a document.

In the Western District of North Carolina, U.S. Probation Officer Keith S. Snyder II credits the integration of CM/ECF with the PACTS Document Imaging Module (PDIM) with more efficient supervision of criminal offenders.

“When a Petition for Warrant of Summons is filed electronically, an approval of the issuance of a warrant is often returned on the same day, which allows for quick action,” he said. Snyder also notes that in PDIM, a paper file is no longer necessary. Case plans are submitted, reviewed, and approved in their entirety without paper files being shuffled back and forth between offices.

The probation office in the U.S. District Court for the District of Columbia began e-filing all of its court documents, including disclosing presentence reports, and final presentence reports in January 2009.


“With the probation office as a full CM/ECF partner, the judges now receive and respond much more easily to petitions for action by using minute orders in lieu of printing, signing, and refiling orders,” said Chief Judge Royce C. Lamberth (D.D.C.). “Communication is faster, more secure, and substantially more efficient since judges can access CM/ECF using secure remote connections.” Lamberth noted that attorneys of record receive immediate

notification upon filing, which allows them to consider and prepare for potential hearings at a much earlier date. “Rescheduled hearings resulting from lost paperwork or failure to receive notice are now rare,” he said. The district’s Chief U.S. Probation Officer, Gennine A. Hagar, points out that not only did their entry into CM/ECF require no new software or equipment, but her office has decreased postage costs and paper use by half.

The Southern District of Alabama has been moving toward becoming a paperless court since 2003, and the addition of electronic documents from the probation office completes the case file. This allowed it to begin a pilot project with the 11th Circuit to electronically file its records on appeal. Shipping files back and forth between courts is a thing of the past in the district.

“Now, certifying the record has been streamlined into a docket entry that reflects the record is complete and available electronically,” said Clerk of Court Chuck R. Diard Jr. He credits electronic filing with allowing him to reduce staff allocated to appeals by half.

Yet another benefit of integrating probation into CM/ECF, according to Mark McCrosen, assistant deputy chief probation officer in the District of Columbia, is the Continuity of Operations Planning factor. “Filing probation documents electronically through CM/ECF is a way for us to keep our operations running no matter where we are,” said McCrosen. “The CM/ECF system can be accessed 24/7 from any computer.”

But the District of Columbia’s Hagar may have put her finger on one of the best reasons to try CM/ECF. “Most judges,” she adds, “were grateful that we stopped flooding their chambers with paper documents.” 

included Judges Alfred Murrah (10th Cir.), John Minor Wisdom (5th Cir.), John Nangle (E.D. Mo.), and Terry Hodges (M.D. Fla.). The current Panel is a great group of experienced judges.

In 1968, Congress enacted 28 U.S.C. § 1407, which created the Panel and which authorizes it to transfer or “centralize,” for pretrial purposes, cases that are pending in different districts in a single district (called the transferee court). The cases must involve common questions of fact, and the Panel must find that centralizing them will further the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

Under current case law, centralization is available for pretrial purposes only. Thus, in most circumstances, when pretrial proceedings have been completed in the transferee court, the Panel—typically acting upon a formal suggestion issued by the assigned transferee judge—remands any remaining pending actions to their transferor courts.

Q: How does the Panel function?

A: The Panel conducts hearing sessions at different locations every two months. The Panel usually hears argument in a federal courthouse. However, recently we held two sessions at Harvard Law School, and we plan for sessions at Vanderbilt and Duke Law Schools in the coming year.

At these sessions, the Panel considers new motions for centralization (i.e., motions for creation of a new multidistrict litigation docket or “MDL”), as well as motions in

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which parties to a particular action are seeking either to include or exclude their action (often referred to as a “tag-along”) from an existing MDL. The Panel generally hears oral argument only on motions to create new dockets, but decides motions regarding tag-alongs on the paper record. The Panel rules quickly, usually issuing all of its orders within two weeks of the hearing session. Except for those hearing sessions, Panel members work out of their respective chambers, as their Panel service is in addition to their normal judicial responsibilities. The Panel’s administrative operations are located in Washington, D.C.

Q: How does centralization benefit the federal courts and the litigants?

A: By gathering together all cases with common factual and legal issues in a single federal district court, one judge can rule on all discovery disputes and other pretrial matters such as motions concerning the sufficiency of the pleadings, class certification, claim construction issues in patent actions, Daubert and other evidentiary issues, and summary judgment. Doing so significantly alleviates the strain on other judges. For the involved litigants, a single forum means eliminating duplicative discovery and multiple motions on the same issue. It also eliminates the possibility of inconsistent rulings, and reduces the time and expense of the litigation. Because the Section 1407 process gathers all the involved parties in a single forum, it often enhances or hastens the prospects of a global settlement.

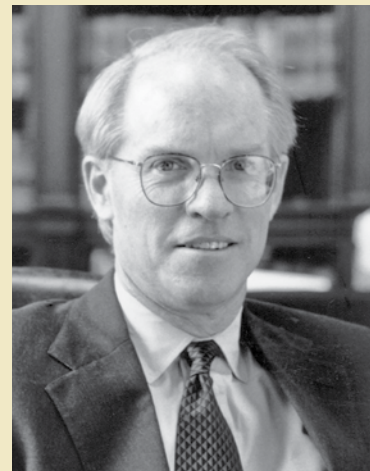
Q: What kinds of cases does the Panel typically centralize?

A: The Panel’s docket is quite varied. In 2009, the Panel ruled on Section 1407 motions seeking creation of new MDLs encompassing marketing and sale practices cases, securities and ERISA cases, antitrust cases, product liability cases, employment-related cases, and patent cases—not to mention a number of litigations involving aircraft disasters, contract disputes, and other subjects. I have noticed that many prominent news stories often have an MDL connection. For example, the Bernard Madoff scandal, issues arising from the recent financial crisis, and the thousands of claims concerning Chinese-manufactured drywall have all been the subjects of recently-centralized MDLs. The recent highly praised Vioxx settlement owes much to the efforts of Judge Eldon Fallon (E.D. La.), the involved MDL judge.

Q: What are the primary criteria for selection of the transferee district and judge for a new MDL?

A: Selecting the “right” transferee judge is critically important, because the success of an MDL largely turns on the work of that judge and the parties. Typically, the Panel seeks a judge with some existing knowledge of the involved cases or the issues presented. Ultimately, however, the willingness and motivation of a judge to undertake the often substantial additional responsibilities of an MDL are the most important attributes.

The selection of an appropriate transferee district is usually of lesser



Judge John G. Heyburn (W.D. Ky.)

importance. The location of the transferee court can be significant, where a particular district is convenient to likely discovery needs, related grand jury proceedings, or ongoing state court litigation involving the same parties and subject matter.

Among other criteria, the Panel considers the location of the involved actions, and particularly that of the most advanced action, and the existence of a *qui tam* action based on the same factual allegations. If a significant number of plaintiffs and defendants favor a particular district, the Panel will also take that into consideration, although it is generally not dispositive.

Q: How many pending MDL dockets and involved cases are there?

A: Section 1407 MDL cases comprise an increasingly significant portion of the federal civil case docket. Currently, approximately 310 MDLs are pending in over 60 federal districts. About 240 judges are overseeing one or more MDLs. Approximately 92,000 pending individual cases are part of

an MDL docket, of which approximately 48,000 are asbestos cases. Even setting the latter aside, MDL cases constitute about 15 percent of the entire federal civil docket. And these numbers do not tell the full story: the Panel's docket is growing in complexity as well.

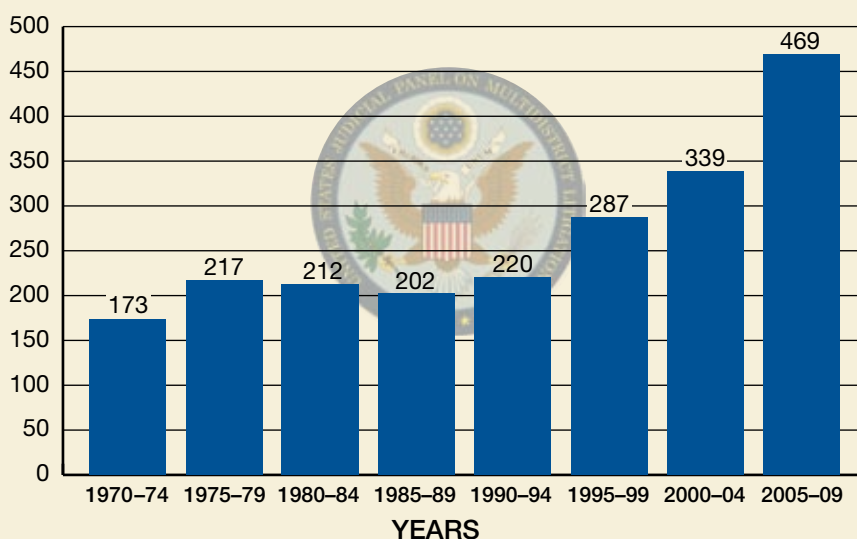
Q: What is the current composition of the Panel's docket and how has it changed over the years?

A: The advent of the Class Action Fairness Act (CAFA) and evolving judicial views of class certification under Rule 23 have coincided to make centralization under Section 1407 an often attractive alternative for resolving complex aggregated claims. This apparent trend presents many challenges for the Panel and its transferee judges. Not surprisingly, many MDL cases are among the most complex and significant in the federal docket.

The Panel's docket is growing in sheer numbers, as the accompanying chart demonstrates. During the 1970s and 1980s, the Panel ruled, on an annual basis, on roughly 30 to 50 motions for centralization. In 1996, the number exceeded 60 for the first time, and between 2003 and 2006, the Panel received over 70 motions for centralization annually. This trend has only continued. In 2009, the Panel ruled on a total of 102 new motions for centralization—not including motions that were mooted or withdrawn. For the May 2009 hearing session in Louisville, Kentucky, the Panel received so many new motions for centralization (over 30) that—for only the second time in its history—it heard oral argument over two days rather than the usual one.

United States Judicial Panel on Multidistrict Litigation

Number of § 1407 Motions for Centralization Filed with the Panel



NOTE: These figures include orders in which the Panel required the involved parties to show cause why certain related actions should not be centralized.

Q: How is the Panel handling this increasing workload?

A: Over the past two years, the Panel has taken a number of steps to shorten the time between the filing of a motion and a decision on that motion. As a consequence, the Panel now decides most cases within 90 days of their being filed, which is an overall improvement of about 60 days. This improvement makes a big difference in avoiding undue delay in the underlying cases. The Panel plans a major operations enhancement with implementation of CM/ECF. This system will expedite our ability to process new motions and will facilitate the efficient and uniform handling of cases after transfer.

We have given district court clerks more explicit and consistent guidance in handling MDL dockets. Together with the Federal Judicial Center, the Panel produced "Ten Steps to Better Case Management: A Guide for Multidistrict Litigation Transferee Court

Clerks." The guide provides helpful advice for implementing an efficient case management system for a new MDL, as well as assistance with MDL-specific rules and procedures.

Q: What does the Panel do to assist transferee judges?

A: The Panel views assistance to transferee judges as one of its most important responsibilities. With that in mind, Judge Barbara J. Rothstein, the director of the FJC, and I recently collaborated in creating a companion to the clerks' guide called, "Ten Steps to Better Case Management: A Guide for Multidistrict Litigation Transferee Court Judges." Although every MDL is unique, the guide discusses useful "best practices" that transferee judges have developed over the years. The Panel provides a copy of this helpful guide to every newly assigned MDL judge.

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INTERVIEW *continued from page 11*

(Both this guide and the guide for transferee court clerks are available on the FJC's website and the Panel's internal website, or by contacting the Panel's clerk's office.)

We are continuing to upgrade the MDL Judge Resources website with timely articles and reference materials. Judge Bill Duffey (N.D. Ga.) is working on two important additions to the Judicial Resources website: (1) a listing of experienced transferee judges who have volunteered to serve as "mentors" for new MDL judges or for those assigned an MDL involving an unfamiliar subject area; and (2) a database of generally applicable orders issued in past or ongoing MDLs. We hope these additions will make the website an even more dependable and helpful resource for transferee judges.

Finally, the Panel organizes a highly regarded annual conference for all current transferee judges.

The conference provides an invaluable opportunity for transferee judges to brainstorm and share their experiences and recommendations regarding best (and worst) practices. This past year, for the first time in many years, we added several non-judge speakers to provide an outsider's perspective on various aspects of the MDL process and transferee court litigation. The Panel is committed to doing whatever possible to assist transferee judges in carrying out their responsibilities. Their work is the ultimate testament to whether the MDL process is successful, and we owe them a great debt of gratitude.

Q: How does the Panel evaluate the success of its work?

A: The Panel regularly evaluates its procedures and the

consequences of its decisions. In 2010 we plan a more formal and in-depth review of those matters. In particular, the Panel anticipates analyzing such issues as whether its centralization decisions may have the (unintended) tendency of benefitting certain groups of lawyers over others, whether there are certain kinds of cases where centralization's benefits are more—or less—clear, and whether there are circumstances in which the Panel should discontinue transferring tag-along actions to an existing MDL.

I am indebted to my fellow Panel members, both past and present, for their wise counsel and recommendations. Each of us believes that the Panel is making a positive contribution to justice in these most difficult cases. 